



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 26, 2023

IN THE MATTER OF:

Appeal Board No. 628846

PRESENT: JUNE F. O'NEILL, MEMBER

The Department of Labor issued the initial determination, disqualifying the claimant from receiving benefits, effective November 21, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed April 12, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer and the Commissioner of Labor appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted on behalf of the employer and the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant lost his full-time employment with a bank under circumstances not currently at issue. He contemporaneously worked as a home health aide, caring for his own mother at her home, on Fridays, Saturdays and Sundays, eight hours per day, twenty-four hours per week. His brother-in-law similarly provided care for the claimant's mother during the remaining four days per week.

The claimant and his wife have three children, ages 22, 19, and 16. The claimant's wife was unhappy with the claimant working every weekend; she felt

that he should spend his weekends with his family and that he should work only Monday through Friday. The claimant felt that he had no choice but to choose his marriage in lieu of continuing to care for his mother. As a result, the claimant quit this employment and ceased providing care as of November 13, 2022. Continuing work was available had he not elected to resign.

OPINION: The credible evidence establishes that the claimant resigned from his work as a home health aide for his own mother because his wife did not like him working on weekends. We find that his wife's personal preference for a different schedule fails to serve as good cause to resign from his continued employment. New York Labor Law § 593 (1) (b) defines a "compelling family reason":

(b) A claimant shall not be disqualified from receiving benefits for separation from employment due to any compelling family reason. For purposes of this paragraph, the term "compelling family reason" shall include, but not be limited to, separations related to any of the following:

(i) domestic violence, verified by reasonable and confidential documentation which causes the individual reasonably to believe that such individual's continued employment would jeopardize his or her safety or the safety of any member of his or her immediate family.

(ii) the illness or disability of a member of the individual's immediate family. For the purposes of this subparagraph:

(A) The term "illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

(B) The term "disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise). "Disability" encompasses all types of disability, including: (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.

(iii) the need for the individual to accompany such individual's spouse (A) to a place from which it is impractical for such individual to commute and (B) due to a change in location of the spouse's employment.

(iv) [There are two 1(b)(iv)] where the spouse of the individual is a member of the armed forces of the United States, the need for the individual to accompany such individual's spouse (A) to a place from which it is impractical for such individual to commute and (B) due to a change in location as a result of a military transfer of the spouse.

(iv) [There are two 1(b)(iv)] the need for the individual to provide childcare to the individual's child if such individual has made reasonable efforts to secure alternative childcare.

We find that an argument between spouses about one spouse's work schedule does not constitute a "compelling family reason." Further, the claimant does not offer any testimony or evidence that would fall under these categories. Hence, we find that the claimant resigned for personal reasons, without good cause, under disqualifying circumstances.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, disqualifying the claimant from receiving benefits, effective November 21, 2022, on the basis that the claimant voluntarily separated from employment without good cause, is sustained.

The claimant is denied benefits with respect to the issues decided herein.

JUNE F. O'NEILL, MEMBER